

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

|                              |   |                          |
|------------------------------|---|--------------------------|
| In the matter of the         | ) | NOTICE OF PUBLIC HEARING |
| amendment of ARM 37.30.102,  | ) | ON PROPOSED AMENDMENT    |
| 37.30.405, 37.30.706,        | ) |                          |
| 37.30.730, 37.30.1030, and   | ) |                          |
| 37.30.1401 pertaining to the | ) |                          |
| vocational rehabilitation    | ) |                          |
| program                      | ) |                          |

TO: All Interested Persons

1. On September 23, 2005, at 11:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on September 12, 2005, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.30.102 VOCATIONAL REHABILITATION POLICY: INCORPORATION BY REFERENCE OF FEDERAL AND STATE AUTHORITY (1) The department, except as otherwise provided in this chapter, ~~hereby~~ adopts and incorporates by reference, for purposes of administering the program of vocational rehabilitation services, the federal regulations specified in (2) as presented in the July 1, ~~2001~~ 2004 edition of the Code of Federal Regulations (CFR). These federal regulations, adopted by the United States department of education, govern the administration and delivery by the states of various aspects of vocational rehabilitation services.

(2) through (2)(k)(i) remain the same.

(3) The department, except as otherwise provided in this chapter, ~~hereby~~ adopts and incorporates by reference, for purposes of administering the program of vocational rehabilitation services, the policies specified in (4), as presented in ~~the September 1, 2002 edition of the Montana Vocational Rehabilitation Policy Manual~~. Copies of the policies may be obtained through the Department of Public Health and

Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(4) The following Montana vocational rehabilitation policies govern the administration and delivery of vocational rehabilitation services as specified:

(a) For purposes of selecting appropriate goods: Montana Vocational Rehabilitation Policy B - "Rates of Payment" dated December 27, 2002.

(b) For purposes of staff and consumer safety: Montana Vocational Rehabilitation Policy C1 - "Personal Safety" dated December 27, 2002.

(c) For purposes of conciliation in consumer due process: Montana Vocational Rehabilitation Policy E - "Counselor Determinations" dated December 27, 2002.

(d) For purposes of self-employment service provision: Montana Vocational Rehabilitation Policy M1 - "Self-employment" dated December 27, 2002.

(e) For purposes of defining "emancipated adult" for financial eligibility determinations: Montana Vocational Rehabilitation Policy ZGD08 - "Definitions" dated December 27, 2002.

(f) For purposes of defining "individual with a most significant disability" for federal reporting and order of selection: Montana Vocational Rehabilitation Policy ZGD16 - "Definitions" dated December 27, 2002.

(g) For purposes of developing the IPE: Montana Vocational Rehabilitation Policy W - "Core Requirements of IPE" dated December 27, 2002.

(h) For purposes of emergency response to IPE change requests: Montana Vocational Rehabilitation Policy X - "On-going IPE Services" dated December 27, 2002.

AUTH: Sec. 53-7-102, 53-7-206, 53-7-302 and 53-7-315, MCA

IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-108, 53-7-203, 53-7-205, 53-7-302, 53-7-303, 53-7-306, 53-7-310 and 53-7-314, MCA

37.30.405 VOCATIONAL REHABILITATION PROGRAM: PAYMENT FOR SERVICES (1) through (3) remain the same.

(4) The department may pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that the consumer's income and financial resources, determined as provided in this rule and ARM 37.30.407, do not exceed the maximum amounts allowable for income and for financial resources calculated by the department as provided for in (4)(a) and (b).

(a) The maximum allowable level for income is a prospective 12 month annual income calculated at 250% of the ~~2003~~ 2005 U.S. department of health and human services poverty guidelines for households of different sizes.

(b) through (6)(a) remain the same.

AUTH: Sec. 53-7-102, 53-7-206 and 53-7-315, MCA

IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310, MCA

37.30.706 VOCATIONAL REHABILITATION PROGRAM: PHYSICAL AND MENTAL RESTORATION SERVICES (1) through (3) remain the same.

(4) The department ~~hereby~~ adopts and incorporates by this reference the vocational rehabilitation list of covered services dated ~~September 1~~ December 27, 2002, and published by the department as Montana Vocational Rehabilitation Policy M, "Scope of Montana Vocational Rehabilitation Services", of the Montana Vocational Rehabilitation Policy Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-7-102, 53-7-206, 53-7-302 and 53-7-315, MCA  
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA

37.30.730 VOCATIONAL REHABILITATION PROGRAM: PROVIDER FEES (1) through (1)(a)(iii) remain the same.

(2) The department ~~hereby~~ adopts and incorporates by this reference the vocational rehabilitation fee schedule, dated ~~September 1~~ July 1, 2002, and published by the department as Montana Vocational Rehabilitation Policy R, "Fee Schedule", of the Montana Vocational Rehabilitation Policy Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-7-315, MCA  
IMP: Sec. 53-7-102, 53-7-105, 53-7-108, 53-7-203, 53-7-302, 53-7-303, 53-7-306, 53-7-307 and 53-7-310, MCA

37.30.1030 REHABILITATION FACILITIES: POLICIES ON ESTABLISHMENT (1) through (3) remain the same.

(4) Prior to the establishment of a rehabilitation facility, the department will certify that there is a need for the rehabilitation facility, that the establishment of the facility is consistent with the state rehabilitation facilities plan, and that the facility will be in compliance with all federal and state laws and statutes governing civil rights.

(a) remains the same.

(b) The certification by the state under this ~~section rule~~ and ARM 37.30.1002 are not a guarantee of grants nor of purchases of services by the department.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-7-315, MCA  
IMP: Sec. 53-7-102, 53-7-103, 53-7-302 and 53-7-303, MCA

37.30.1401 FAIR HEARINGS (1) through (8) remain the same.

(9) The department ~~hereby~~ adopts and incorporates by this reference the conciliation procedures, dated ~~September 1~~ December 27, 2002, and published by the department as Policy E, "Counselor Determinations", of the Montana Vocational Rehabilitation Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services,

Disability Services Division, 111 N. Sanders, P.O. Box 4210,  
Helena, MT 59604-4210.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315 and 53-19-112, MCA

IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-203, 53-7-205, 53-7-206, 53-7-302, 53-7-303, 53-7-310, 53-7-314, 53-19-103, 53-19-106 and 53-19-112, MCA

3. The proposed amendments to ARM 37.30.102 and 37.30.405 are for the purpose updating the published dates for other materials that are incorporated by reference into those rules. These rules are part of a set of rules that govern the provision of vocational rehabilitation services to eligible persons by the Department. Vocational rehabilitation services, a federally mandated program administrated by the various states, are for the purpose of physically and economically rehabilitating persons who due to injury or disability do not have access to productive economic activity.

ARM 37.30.102 serves as the principal vehicle for incorporation of other authorities into the rule set. The rule incorporates by reference relevant federal regulations that govern implementation of vocational rehabilitation services by the states and various policies of the Montana vocational rehabilitation program that apply the requirements and limitations of the federal and state authorities.

The Department has chosen as a best practice to utilize the more current editions of the relevant CFR regulations and the departmental policies when incorporating those authorities into the rule set. Leaving an outdated cross reference to a governing authority in place can undermine the legitimacy of the rule set for the program.

The proposed amendment to ARM 37.30.102(1), concerning the incorporation of pertinent federal regulations, would delete the existing cross reference to the publishing date of the 2001 Code of Federal Regulations (CFR) and provide instead for the cross reference to be to the most recent publishing date, 2004, for the governing CFR regulations. Even though there is a new publishing date for the governing CFR regulations, those regulations have not been amended since the 2001 edition and therefore remain unchanged. Consequently, this proposed amendment does not involve any changes to the administration of the program, the eligibility of persons for services, or the provision of services.

The proposed amendments to ARM 37.30.102(3), concerning the incorporation of the various policies of the Montana vocational rehabilitation program that apply the requirements and limitations of the federal and state authorities, would delete the existing cross reference to the publishing date of the September, 1, 2001 for the Montana Vocational Rehabilitation

Manual as a whole and provide instead for cross references to the most recent publishing dates for each of the specific sections of that manual that serve as authority for the administration of the program. These changes are necessary to bring the incorporations of the rule into conformance with the current practice of the program providing separate publishing dates for the specific sections of the manual. The program expects that over time the manual sections will be separately updated on varying intermittent schedules. The existing rule text is incorrect in referencing a single publishing date for the manual as a whole. Failure to make this correction concerning incorporation would result in confusion and undermine the integrity of the rule as a governing authority.

ARM 37.30.405 provides criteria for the purpose of determining the extent to which a consumer is obligated to contribute to the payment for the vocational rehabilitation services that the vocational rehabilitation program plans and arranges for delivery to the consumer. The proposed amendment to this rule concerns the calculation of the maximum allowable level for income used in the calculation to determine whether the vocational rehabilitation program will assume financial responsibility for the purchase of the services to be delivered to the consumer. The calculation has been predicated upon the 2003 U.S. department of health and human services poverty guidelines. The proposed rule change would delete the cross reference to the 2003 guidelines and insert instead a cross reference to the 2005 guidelines. This change may benefit some consumers who otherwise, based upon the prior poverty guidelines which were lesser than the more recent, would bear financial responsibility for their services. The Department, however, does not believe that the adoption of the current guidelines for this purpose will have a substantive impact upon the expenditures of the program.

The Department has chosen to pursue adoption of the current standard in lieu of retention of the older standard because failure to maintain over time more current economic indices of financial status for the program could undermine the legitimacy of those factors for purposes of the calculation and of overall predicates for eligibility. The Department at this time has not identified any more appropriate criteria to be applied to the calculation.

The proposed amendment for the change in date of publication for Policy M, pertaining to the scope of Montana vocational rehabilitation services, stated for purposes of incorporation by reference in ARM 37.30.706, is necessary to state the correct date of publication. The proposed change of date does not represent any change in the text of the policy.

The proposed amendment for the change in date of publication for Policy R, pertaining to the fee schedule, stated for purposes of incorporation by reference in ARM 37.30.730, is necessary to

state the correct date of publication. The proposed change of date does not represent any change in the text of the policy.

The proposed amendment for the change in date of publication for Policy E, pertaining to counselor determinations, stated for purposes of incorporation by reference in ARM 37.30.1401, is necessary to state the correct date of publication. The proposed change of date does not represent any change in the text of the policy.

The proposed amendments to ARM 37.30.706, 37.30.730, 37.30.1030 and 37.30.1401 are for the purpose of removing, in conformance with the Secretary of State's guidelines, inappropriate nomenclature. Inappropriate nomenclature is also proposed to be removed from ARM 37.30.102. The proposed changes to the text of these rules are not substantive and do not affect their application.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on September 29, 2005. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva  
Rule Reviewer

Russ Cater for  
Acting Director, Public  
Health and Human Services

Certified to the Secretary of State August 15, 2005.